

§ 541.105

## Wage and Hour Division, Labor

he supervises other employees, directs the work of warehouse and delivery men, approves advertising, orders merchandise, handles customer complaints, authorizes payment of bills, or performs other management duties as the day-to-day operations require. He will be considered to have management as his primary duty. In the data processing field an employee who directs the day-to-day activities of a single group of programmers and who performs the more complex or responsible jobs in programming will be considered to have management as his primary duty.

## § 541.104 Department or subdivision.

(a) In order to qualify under § 541.1, the employee's managerial duties must be performed with respect to the enterprise in which he is employed or a customarily recognized department or subdivision thereof. The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of men assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. In order properly to classify an individual as an executive he must be more than merely a supervisor of two or more employees; nor is it sufficient that he merely participates in the management of the unit. He must be in charge of and have as his primary duty the management of a recognized unit which has a continuing function.

(b) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a customarily recognized department or subdivision of a department. For example, it is clear that where an enterprise comprises more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise. Questions arise principally in cases involving supervisors who work outside the employer's establishment, move from place to place, or have different subordinates at different times.

(c) In such instances, in determining whether the employee is in charge of a recognized unit with a continuing function, it is the division's position that the unit supervised need not be physically within the employer's establish-

ment and may move from place to place, and that continuity of the same subordinate personnel is not absolutely essential to the existence of a recognized unit with a continuing function, although in the ordinary case a fixed location and continuity of personnel are both helpful in establishing the existence of such a unit. The following examples will illustrate these points.

(d) The projects on which an individual in charge of a certain type of construction work is employed may occur at different locations, and he may even hire most of his workforce at these locations. The mere fact that he moves his location would not invalidate his exemption if there are other factors which show that he is actually in charge of a recognized unit with a continuing function in the organization.

(e) Nor will an otherwise exempt employee lose the exemption merely because he draws the men under his supervision from a pool, if other factors are present which indicate that he is in charge of a recognized unit with a continuing function. For instance, if this employee is in charge of the unit which has the continuing responsibility for making all installations for his employer, or all installations in a particular city or a designated portion of a city, he would be in charge of a department or subdivision despite the fact that he draws his subordinates from a pool of available men.

(f) It cannot be said, however, that a supervisor drawn from a pool of supervisors who supervises employees assigned to him from a pool and who is assigned a job or series of jobs from day to day or week to week has the status of an executive. Such an employee is not in charge of a recognized unit with a continuing function.

## § 541.105 Two or more other employees.

(a) An employee will qualify as an "executive" under § 541.1 only if he customarily and regularly supervises at least two full-time employees or the equivalent. For example, if the "executive" supervises one full-time and two part-time employees of whom one works morning and one, afternoon; or four part-time employees, two of whom



**§ 541.106**

work mornings and two afternoons. this requirement would be met.

(b) The employees supervised must be employed in the department which the "executive" is managing.

(c) It has been the experience of the divisions that a supervisor of a few as two employees usually performs non-exempt work in excess of the general 20-percent tolerance provided in § 541.1.

(d) In a large machine shop there may be a machine-shop supervisor and two assistant machine-shop supervisors. Assuming that they meet all the other qualifications § 541.1 and particularly that they are not working foremen, they should certainly qualify for the exemption. A small department in a plant or in an office is usually supervised by one person. Any attempt to classify one of the other workers in the department as an executive merely by giving him an honorific title such as assistant supervisor will almost inevitably fail as there will not be sufficient true supervisory or other managerial work to keep two persons occupied. On the other hand, it is incorrect to assume that in a large department, such as a large shoe department in a retail store which has separate sections for men's, women's, and children's shoes, for example, the supervision cannot be distributed among two or three employees, conceivably among more. In such instances, assuming that the other tests are met, especially the one concerning the performance of non-exempt work, each such employee "customarily and regularly directs the work of two or more other employees therein."

(e) An employee who merely assists the manager or buyer of a particular department and supervises two or more employees only in the actual manager's or buyer's absence, however, does not meet this requirement. For example, where a single unsegregated department, such as a women's sportswear department or a men's shirt department in a retail store, is managed by a buyer, with the assistance of one or more assistant buyers, only one employee, the buyer, can be considered an executive, even though the assistant buyers at times exercise some managerial and supervisory responsibilities. A shared responsibility for the super-

**29 CFR Ch. V (7-1-02 Edition)**

vision of the same two or more employees in the same department does not satisfy the requirement that the employee "customarily and regularly directs the work of two or more employees therein."

**§ 541.106 Authority to hire or fire.**

Section 541.1 requires that an exempt executive employee have the authority to hire or fire other employees or that his suggestions and recommendations as to hiring or firing and as to advancement and promotion or any other change of status of the employees who he supervises will be given particular weight. Thus, no employee, whether high or low in the hierarchy of management, can be considered as employed in a bona fide executive capacity unless he is directly concerned either with the hiring or the firing and other change of status of the employees under his supervision, whether by direct action or by recommendation to those to whom the hiring and firing functions are delegated.

**§ 541.107 Discretionary powers.**

(a) Section 541.1(d) requires that an exempt executive employee customarily and regularly exercise discretionary powers. A person whose work is so completely routinized that he has no discretion does not qualify for exemption.

(b) The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretionary powers.

**§ 541.108 Work directly and closely related.**

(a) This phrase brings within the category of exempt work not only the actual management of the department and the supervision of the employees therein, but also activities which are closely associated with the performance of the duties involved in such managerial and supervisory functions

**Wage and Hour Division, Lat**

or responsibilities. The supervisory employees and the management department include a great deal of work directly and closely related to the work which is different from the work performed by subordinates and are contributed by supervisors because they are helpful in supervising the employees and contribute to the smooth operation of the department for which they are responsible. Frequently such work is of a kind which involves management of the department which are organized divisions which are larger and have a specialization of function, management of the department is performed by a nonexempt employee especially for that purpose. The phrase "directly and closely related" will serve to make clear that the phrase "directly and closely related" is to be given the phrase "directly and closely related".

(b) Keeping basic records of time, for example, is frequently performed by a timekeeper at that purpose. In such cases clearly not exempt in nature, establishments which are large enough to employ a timekeeper which the timekeeping function has been decentralized, the establishment keeps the records of his own subordinates. These instances, as indicated, timekeeping is directly related to the function of managing the department and supervising employees. However, the preparation of a roll by a supervisor, even if the employees under his supervision cannot be considered to be work, since the preparation of a roll does not aid in the supervision of the employees or the management of the department. Similarly, the preparation of a supervisor of production records of his own subordinates in supervision or control of non-exempt work, while the management of production records of employees under his direction would be exempt work.

(c) Another example of work which may be directly and closely related to the performance of management is the distribution of merchandise and supplies, control of the flow of merchandise and supplies in the department is ordinarily a responsibility of a managerial employee in



§ 541.108

## Wage and Hour Division, Labor

or responsibilities. The supervision of employees and the management of a department include a great many directly and closely related tasks which are different from the work performed by subordinates and are commonly performed by supervisors because they are helpful in supervising the employees or contribute to the smooth functioning of the department for which they are responsible. Frequently such exempt work is of a kind which in establishments that are organized differently or which are larger and have greater specialization of function, may be performed by a nonexempt employee hired especially for that purpose. Illustration will serve to make clear the meaning to be given the phrase "directly and closely related".

(b) Keeping basic records of working time, for example, is frequently performed by a timekeeper employed for that purpose. In such cases the work is clearly not exempt in nature. In other establishments which are not large enough to employ a timekeeper, or in which the timekeeping function has been decentralized, the supervisor of each department keeps the basic time records of his own subordinates. In these instances, as indicated above, the timekeeping is directly related to the function of managing the particular department and supervising its employees. However, the preparation of a payroll by a supervisor, even the payroll of the employees under his supervision, cannot be considered to be exempt work, since the preparation of a payroll does not aid in the supervision of the employees or the management of the department. Similarly, the keeping by a supervisor of production or sales records of his own subordinates for use in supervision or control would be exempt work, while the maintenance of production records of employees not under his direction would not be exempt work.

(c) Another example of work which may be directly and closely related to the performance of management duties is the distribution of materials or merchandise and supplies. Maintaining control of the flow of materials or merchandise and supplies in a department is ordinarily a responsibility of the managerial employee in charge. In

many nonmercantile establishments the actual distribution of materials is performed by nonexempt employees under the supervisor's direction. In other establishments it is not uncommon to leave the actual distribution of materials and supplies in the hands of the supervisor. In such cases it is exempt work since it is directly and closely related to the managerial responsibility of maintaining the flow of materials. In a large retail establishment, however, where the replenishing of stocks of merchandise on the sales floor is customarily assigned to a nonexempt employee, the performance of such work by the manager or buyer of the department is nonexempt. The amount of time the manager or buyer spends in such work must be offset against the statutory tolerance for nonexempt work. The supervision and control of a flow of merchandise to the sales floor, of course, is directly and closely related to the managerial responsibility of the manager or buyer.

(d) Setup work is another illustration of work which may be exempt under certain circumstances if performed by a supervisor. The nature of setup work differs in various industries and for different operations. Some setup work is typically performed by the same employees who perform the "production" work; that is, the employee who operates the machine also "sets it up" or adjusts it for the particular job at hand. Such setup work is part of the production operation and is not exempt. In other instances the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In some plants, particularly large ones, such setup work may be performed by employees whose duties are not supervisory in nature. In other plants, however, particularly small plants, such work is a regular duty of the executive and is directly and closely related to his responsibility for the work performance of his subordinates and for the adequacy of the final product. Under such circumstances it is exempt work. In the data processing field the work of a supervisor when he performs the more complex or more responsible work in a program utilizing several computer



## § 541.109

## 29 CFR Ch. V (7-1-02 Edition)

programers or computer operators would be exempt activity.

(e) Similarly, a supervisor who spot checks and examines the work of his subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to his managerial and supervisory functions.

However, this kind of examining and checking must be distinguished from the kind which is normally performed by an "examiner," "checker," or "inspector," and which is really a production operation rather than a part of the supervisory function. Likewise, a department manager or buyer in a retail or service establishment who goes about the sales floor observing the work of sales personnel under his supervision to determine the effectiveness of their sales techniques, checking on the quality of customer service being given, or observing customer preferences and reactions to the lines, styles, types, colors, and quality of the merchandise offered, is performing work which is directly and closely related to his managerial and supervisory functions. His actual participation, except for supervisory training or demonstration purposes, in such activities as making sales to customers, replenishing stocks of merchandise on the sales floor, removing merchandise from fitting rooms and returning to stock or shelves, however, is not. The amount of time a manager or buyer spends in the performance of such activities must be included in computing the percentage limitation on non-exempt work.

(f) Watching machines is another duty which may be exempt when performed by a supervisor under proper circumstances. Obviously the mere watching of machines in operation cannot be considered exempt work where, as in certain industries in which the machinery is largely automatic, it is an ordinary production function. Thus, an employee who watches machines for the purpose of seeing that they operate properly or for the purpose of making repairs or adjustments is performing nonexempt work. On the other hand, a supervisor who watches the operation of the machinery in his department in

the sense that he "keeps an eye out for trouble" is performing work which is directly and closely related to his managerial responsibilities. Making an occasional adjustment in the machinery under such circumstances is also exempt work.

(g) A word of caution is necessary in connection with these illustrations. The recordkeeping, material distributing, setup work, machine watching and adjusting, and inspecting, examining, observing and checking referred to in the examples of exempt work are presumably the kind which are supervisory and managerial functions rather than merely "production" work. Frequently it is difficult to distinguish the managerial type from the type which is a production operation. In deciding such difficult cases it should be borne in mind that it is one of the objectives of § 541.1 to exclude from the definition foremen who hold "dual" or combination jobs. (See discussion of working foremen in § 541.115.) Thus, if work of this kind takes up a large part of the employee's time it would be evidence that management of the department is not the primary duty of the employee, that such work is a production operation rather than a function directly and closely related to the supervisory or managerial duties, and that the employee is in reality a combination foreman-setup man, foreman-machine adjuster (or mechanic), or foreman-examiner, foreman-salesperson, etc., rather than a bona fide executive.

## § 541.109 Emergencies.

(a) Under certain occasional emergency conditions, work which is normally performed by nonexempt employees and is nonexempt in nature will be directly and closely related to the performance of the exempt functions of management and supervision and will therefore be exempt work. In effect, this means that a bona fide executive who performs work of a normally nonexempt nature on rare occasions because of the existence of a real emergency will not, because of the performance of such emergency work, lose the exemption. Bona fide executives include among their responsibilities the

## Wage and Hour Division.

safety of the employees under supervision, the preservation of the merchandise, other property of the subdivision in their charge due to unforeseen circumstances, and the prevention of breakdown in production service operations. Counsel conditions beyond control threaten the safety of the or a cessation of operation damage to the employee any manual or other exempt work performed to prevent such results is exempt work and is not included in the percentage of nonexempt work.

(b) The rule in paragraph section is not applicable nonexempt work arising from circumstances which are not beyond the employer's control for which the employer can provide in the normal course of business.

(c) A few illustrations in distinguishing routine work formed as a result of circumstances of the kind for which no practically be made by in advance of their occurrence work which is not emergency. It is obvious that intendents who pitches in explosion and digs out the trapped in the mine is not executive during that other hand, the manager establishment who person the cleaning operations garments because he fear the fabrics if he allows to handle them is not "emergency" work of the can be considered exempt manager of a department store performing exempt personally waits on a impatient customer because loss of the sale or the customer will if he allows a salesperson him. The performance work by executives during taking, during other peak workload, or the handling orders are the kinds of activities the percentage tolerance to cover. For example,



Ch. V (7-1-02 Edition)

"keeps an eye out for  
ing work which is  
y related to his man-  
ities. Making an ac-  
nt in the machinery  
stances is also ex-

ution is necessary in  
these illustrations.  
g. material distrib-  
machine watching  
d inspecting, exam-  
ad checking referred  
of exempt work are  
nd which are super-  
rial functions rather  
uction" work. Fre-  
dt to distinguish the  
om the type which is  
ration. In deciding  
s it should be borne  
one of the objectives  
from the definition  
"dual" or combina-  
ssion of working  
5. Thus, if work of  
a part of the  
w be evidence  
department is  
y of the employee,  
a production oper-  
a function directly  
to the supervisory  
es, and that the em-  
a combination fore-  
foreman-machine  
nck, or foreman-ex-  
-salesperson, etc.,  
fide executive.

ies.

n occasional emer-  
work which is nor-  
by nonexempt em-  
exempt in nature  
d closely related to  
f the exempt func-  
nt and supervision  
be exempt work. In  
that a bona fide ex-  
ms work of a nor-  
ature on rare occa-  
existence of a real  
because of the per-  
mergency work, loss  
a fide executives in-  
responsibilities the

## Wage and Hour Division, Labor

\$541.109

safety of the employees under their su-  
pervision, the preservation and protec-  
tion of the merchandise, machinery or  
other property of the department or  
subdivision in their charge from dam-  
age due to unforeseen circumstances,  
and the prevention of widespread  
breakdown in production, sales, or  
service operations. Consequently, when  
conditions beyond control arise which  
threaten the safety of the employees,  
or a cessation of operations, or serious  
damage to the employer's property,  
any manual or other normally non-  
exempt work performed in an effort to  
prevent such results is considered ex-  
empt work and is not included in com-  
puting the percentage limitation on  
nonexempt work.

(b) The rule in paragraph (a) of this  
section is not applicable, however, to  
nonexempt work arising out of occur-  
rences which are not beyond control or  
for which the employer can reasonably  
provide in the normal course of busi-  
ness.

(c) A few illustrations may be helpful  
in distinguishing routine work per-  
formed as a result of real emergencies  
of the kind for which no provision can  
practicably be made by the employer  
in advance of their occurrence and rou-  
tine work which is not in this cat-  
egory. It is obvious that a mine super-  
intendent who pitches in after an ex-  
plosion and digs out the men who are  
trapped in the mine is still a bona fide  
executive during that week. On the  
other hand, the manager of a cleaning  
establishment who personally performs  
the cleaning operations on expensive  
garments because he fears damage to  
the fabrics if he allows his subordinates  
to handle them is not performing  
"emergency" work of the kind which  
can be considered exempt. Nor is the  
manager of a department in a retail  
store performing exempt work when he  
personally waits on a special or impa-  
tient customer because he fears the  
loss of the sale or the customer's good-  
will if he allows a salesperson to serve  
him. The performance of nonexempt  
work by executives during inventory-  
taking, during other periods of heavy  
workload, or the handling of rush or-  
ders are the kinds of activities which  
the percentage tolerances are intended  
to cover. For example, pitching in on

the production line in a canning plant  
during seasonal operations is not ex-  
empt "emergency" work even if the ob-  
jective is to keep the food from spoil-  
ing. Similarly, pitching in behind the  
sales counter in a retail store during  
special sales or during Christmas or  
Easter or other peak sales periods is  
not "emergency" work, even if the ob-  
jective is to improve customer service  
and the store's sales record. Mainte-  
nance work is not emergency work  
even if performed at night or during  
weekends. Relieving subordinates dur-  
ing rest or vacation periods cannot be  
considered in the nature of "emer-  
gency" work since the need for replace-  
ments can be anticipated. Whether re-  
placing the subordinate at the work-  
bench, or production line, or sales  
counter during the first day or partial  
day of an illness would be considered  
exempt emergency work would depend  
upon the circumstances in the par-  
ticular case. Such factors as the size of  
the establishment and of the execu-  
tive's department, the nature of the in-  
dustry, the consequences that would  
flow from the failure to replace the ill-  
ing employee immediately, and the fea-  
sibility of filling the employee's place  
promptly would all have to be weighed.

(d) All the regular cleaning up  
around machinery, even when nec-  
essary to prevent fire or explosion, is  
not "emergency" work. However, the  
removal by an executive of dirt or ob-  
structions constituting a hazard to life  
or property need not be included in  
computing the percentage limitation if  
it is not reasonably practicable for  
anyone but the supervisor to perform  
the work and it is the kind of "emer-  
gency" which has not been recurring.  
The occasional performance of repair  
work in case of a breakdown of machin-  
ery, or the collapse of a display rack,  
or damage to or exceptional disarray of  
merchandise caused by accident or a  
customer's carelessness may be consid-  
ered exempt work if the breakdown is  
one which the employer cannot reason-  
ably anticipate. However, recurring  
breakdowns or disarrays requiring fre-  
quent attention, such as that of an old  
belt or machine which breaks down re-  
peatedly or merchandise displays con-  
stantly requiring re-sorting or  
straightening, are the kind for which



## § 541.110

provision could reasonably be made and repair of which must be considered as nonexempt.

## § 541.110 Occasional tasks.

(a) In addition to the type of work which by its very nature is readily identifiable as being directly and closely related to the performance of the supervisory and management duties, there is another type of work which may be considered directly and closely related to the performance of these duties. In many establishments the proper management of a department requires the performance of a variety of occasional, infrequently recurring tasks which cannot practicably be performed by the production workers and are usually performed by the executive. These small tasks when viewed separately without regard to their relationship to the executive's overall functions might appear to constitute nonexempt work. In reality they are the means of properly carrying out the employee's management functions and responsibilities in connection with men, materials, and production. The particular tasks are not specifically assigned to the "executive" but are performed by him in his discretion.

(b) It might be possible for the executive to take one of his subordinates away from his usual tasks, instruct and direct him in the work to be done, and wait for him to finish it. It would certainly not be practicable, however, to manage a department in this fashion. With respect to such occasional and relatively inconsequential tasks, it is the practice in industry generally for the executive to perform them rather than to delegate them to other persons. When any one of these tasks is done frequently, however, it takes on the character of a regular production function which could be performed by a nonexempt employee and must be counted as nonexempt work. In determining whether such work is directly and closely related to the performance of the management duties, consideration should be given to whether it is:

(1) The same as the work performed by any of the subordinates of the executive; or (2) a specifically assigned task of the executive employees; or (3) practicably delegable to nonexempt em-

## 29 CFR Ch. V (7-1-02 Edition)

ployees in the establishment; or (4) repetitive and frequently recurring.

## § 541.111 Nonexempt work generally.

(a) As indicated in § 541.101 the term "nonexempt work," as used in this subpart, includes all work other than that described in § 541.1 (a) through (d) and the activities directly and closely related to such work.

(b) Nonexempt work is easily identifiable where, as in the usual case, it consists of work of the same nature as that performed by the nonexempt subordinates of the "executive." It is more difficult to identify in cases where supervisory employees spend a significant amount of time in activities not performed by any of their subordinates and not consisting of actual supervision and management. In such cases careful analysis of the employee's duties with reference to the phrase "directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section" will usually be necessary in arriving at a determination.

## § 541.112 Percentage limitations on nonexempt work.

(a) An employee will not qualify for exemption as an executive if he devotes more than 20 percent, or in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work. This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(b)(1) The maximum allowance of 20 percent for nonexempt work applies unless the establishment by which the employee is employed qualifies for the higher allowance as a retail or service establishment within the meaning of the Act. Such an establishment must be a distinct physical place of business, open to the general public, which is engaged on the premises in making sales of goods or services to which the concept of retail selling or servicing applies. As defined in section 13(a)(2) of the Act, such an establishment must make at least 75 percent of its annual

## Wage and Hour Division, Labor

dollar volume of sales of goods from sales that are both sale and recognized as retail in particular industry. Types of establishments which may meet these requirements include stores selling consumer goods to the public; hotels; motels; restaurants; some types of amusement recreational establishments (but not offering wagering or gambling); hospitals; or institutions primarily engaged in the care of the aged, the mentally ill, or residing on the premises, if open to the general public; public parking parking garages; auto repair gasoline service stations (but not stops); funeral homes; cemeteries. Further explanation and illustrations of the establishments included in the term "retail or service establishment" as used in the Act may be found in 779 of this chapter.

(2) Public and private elementary and secondary schools and institutions of higher education are, as a retail or service establishment, if they are not engaged in sales of goods or services to which the retail or service concept applies. Under section 13(a)(2) of the Act prior to the 1966 amendment it was possible for private schools, physically or mentally handicapped or gifted children to qualify as retail or service establishments if they met the statutory tests, because certain types of services provided to students were considered by Congress to be of a kind that may be retail. Such schools, unless their operations have changed, continue to qualify as retail establishments and, if they utilize the greater tolerance for nonexempt work provided for administrative employees in retail or service establishments under section 13(a)(1) of the Act.

(3) The legislative history makes it plain that an establishment engaged in laundering, cleaning, pairing clothing or fabrics is a retail or service establishment. The Act was amended in 1949, Congress included such establishments in the exemption under section 13(a)(2) of the Act because of the lack of a retail sale of the services sold by such establishments, and provided a separate



§ 541.113

## Wage and Hour Division, Labor

dollar volume of sales of goods or services from sales that are both not for resale and recognized as retail in the particular industry. Types of establishments which may meet these tests include stores selling consumer goods to the public; hotels; motels; restaurants; some types of amusement or recreational establishments (but not those offering wagering or gambling facilities); hospitals, or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or defective residing on the premises; if open to the general public; public parking lots and parking garages; auto repair shops; gasoline service stations (but not truck stops); funeral homes; cetera; etc. Further explanation and illustrations of the establishments included in the term "retail or service establishment" as used in the Act may be found in part 779 of this chapter.

(2) Public and private elementary and secondary schools and institutions of higher education are, as a rule, not retail or service establishments, because they are not engaged in sales of goods or services to which the retail concept applies. Under section 13(a)(2)(B) of the Act prior to the 1966 amendments, it was possible for private schools for physically or mentally handicapped or gifted children to qualify as retail or service establishments if they met the statutory tests, because the special types of services provided to their students were considered by Congress to be of a kind that may be recognized as retail. Such schools, unless the nature of their operations has changed, may continue to qualify as retail or service establishments and, if they do, may utilize the greater tolerance for nonexempt work provided for executive and administrative employees of retail or service establishments under section 13(a)(1) of the Act.

(3) The legislative history of the Act makes it plain that an establishment engaged in laundering, cleaning, or repairing clothing or fabrics is not a retail or service establishment. When the Act was amended in 1949, Congress excluded such establishments from the exemption under section 13(a)(2) because of the lack of a retail concept in the services sold by such establishments, and provided a separate exemp-

tion for them which did not depend on status as a retailer. Again in 1966, when this exemption was repealed, Congress made it plain by exclusionary language that the exemption for retail or service establishments was not to be applied to laundries or dry cleaners.

(c) There are two special exceptions to the percentage limitations of paragraph (a) of this section:

(1) That relating to the employee in "sole charge" of an independent or branch establishment, and

(2) That relating to an employee owning a 20-percent interest in the enterprise in which he is employed. These except the employee only from the percentage limitations on nonexempt work. They do not except the employee from any of the other requirements of § 541.1. Thus, while the percentage limitations on nonexempt work are not applicable, it is clear that an employee would not qualify for the exemption if he performs so much nonexempt work that he could no longer meet the requirement of § 541.1(a) that his primary duty must consist of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof.

## § 541.113 Sole-charge exception.

(a) An exception from the percentage limitations on nonexempt work is provided in § 541.113 for "an employee who is in sole charge of an independent establishment or a physically separated branch establishment." Such an employee is considered to be employed in a bona fide executive capacity even though he exceeds the applicable percentage limitation on nonexempt work.

(b) The term "independent establishment" must be given full weight. The establishment must have a fixed location and must be geographically separated from other company property. The management of operations within one among several buildings located on a single or adjoining tracts of company property does not qualify for the exemption under this heading. In the case of a branch, there must be a true and complete physical separation from the main office.

(c)(1) A determination as to the status as "an independent establishment